Supreme Court, U.S.
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No. 97-56

In the Supreme Court of the United States

OCTOBER TERM, 1996

STANLEY L. PETERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
DOUGLAS N. LETTER
BRUCE G. FORREST
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether the government's civil recovery against petitioner under the False Claims Act, after petitioner's criminal prosecution and punishment for violating the Act, subjected petitioner to double jeopardy.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is reported at 110 F.3d 616. The opinion of the district court (Pet. App. 6-22) is reported at 927 F. Supp. 363.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 1997. The petition for a writ of certiorari was filed on July 7, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner operated an engineering and architectural firm that assisted school districts in securing funds from the Environmental Protection Agency

(EPA) for the removal of asbestos. Between 1989 and 1991, petitioner conspired with others to submit false claims to EPA for reimbursement of the costs of asbestos removal under the Asbestos School Hazard Abatement Act, 20 U.S.C. 4011 *et seq.* (ASHAA). The conspirators agreed to certify falsely to EPA that the costs of removal had been incurred and that the work had been performed in accordance with the requirements of the ASHAA. Pet. App. 2.

Petitioner was convicted on three counts of filing false claims, in violation of 18 U.S.C. 287, one count of conspiracy to defraud the United States, in violation of 18 U.S.C. 371, and one count of theft of government property, in violation of 18 U.S.C. 641. Pet. App. 9. Petitioner was sentenced to 24 months' imprisonment and was ordered to pay restitution to the government in the amount of $153,476, which was the amount of overpayment made by EPA as a result of the falsely certified expenditures. *Ibid.*

2. Subsequently, the United States brought the instant civil action against petitioner under the civil provisions of the False Claims Act, 31 U.S.C. 3729 *et seq.* Applying principles of collateral estoppel, the district court entered summary judgment in favor of the government on the basis of the criminal convictions. Pet. App. 22. Under Section 3729(a), a person who knowingly submits false claims to the United States or conspires to defraud the government is liable for three times the damages caused and a civil penalty of "not less than $5,000. and not more than $10,000." for each false claim. In this case, the district court awarded the government $480,428, consisting of the treble damages component ($460,428), plus civil penalties of $5,000 for each of the four false claims. This award was reduced by any payments

made toward satisfaction of the criminal restitution order. Pet. App. 16, 21.

The district court also rejected petitioner's claim that the monetary award violated the Double Jeopardy Clause. The district court noted that the government's losses included, in addition to the $153,476 paid out by the EPA because of the false claims, investigative and litigating costs of $92,042 incurred by the FBI and EPA, such that the total loss to the government was $245,518. Pet. App. 16-17. The district court observed that, unlike the situation in *United States* v. *Halper*, 490 U.S. 435 (1989), in which "a fixed-penalty provision subject[ed] a prolific but small-gauge offender to [a] sanction overwhelmingly disproportionate to the damages he ha[d] caused," Pet. App. 20 (quoting *Halper*, 490 U.S. at 449), this case involved only four violations resulting in a large, actual loss to the government, *ibid.* Thus, the district court concluded, "[t]he damages and civil penalties the government is entitled to under the False Claims Act in the amount of $480,428 cannot be said to bear no rational relation to the remedial goal of making the government whole for its proven losses of $245,518.21." *Id.* at 21.

3. The court of appeals affirmed, also finding petitioner's double-jeopardy argument to be unavailing. Pet. App. 1-5. The court observed initially that, under "[t]he rule laid down in *Halper*," petitioner must show that "his is that particular case in which a civil penalty authorized by the False Claims Act is so extreme and so divorced from the Government's damages and expenses as to constitute punishment." *Id.* at 3 (brackets and internal quotation marks omitted).

The court concluded that, under the *Halper* rule, the sum petitioner was required to pay was not

wholly disproportionate to the government's loss. The court first held (following circuit precedent) that the treble-damages provision of the False Claims Act is "in the nature of rough remedial justice and therefore not punitive for double-jeopardy purposes." Pet. App. 4 (citing *United States* v. *Brekke*, 97 F.3d 1043, 1048 (8th Cir. 1996)). Thus, the court ruled, petitioner has "no constitutional defense" with respect to the greatest part of the sum that he must pay, the trebled damages amounting to $460,428. *Ibid.* As for the remaining, relatively modest part of the liability that results from the statutory penalty, $20,000, the court found that that amount also did not implicate the proscription in *Halper* against "overwhelmingly disproportionate" penalties. *Id.* at 4. The court observed that the ratio between the $20,000 in statutory penalties and the government's actual damages was less than 1:1, in marked contrast to *Halper*, where the same ratio of the penalty to the damages was 224:1. Thus, "[t]he ratio of [petitioner's] fixed penalty to the damages that he caused cannot possibly support a claim that he has been subjected to double jeopardy." *Id.* at 5.

ARGUMENT

The decision of the court of appeals, that on the facts of this case petitioner was not subjected to double jeopardy by application of the False Claims Act's civil damages and penalty provision after his criminal prosecution, is correct. That decision does not conflict with any decision of this Court or the decision of any court of appeals. The application of *United States* v. *Halper*, 490 U.S. 435 (1989), to the specific facts of this case presents no significant legal issue warrant-

ing this Court's plenary consideration. Accordingly, further review is not warranted.

1. The courts below were correct in concluding that this Court's decision in *Halper* provides no basis for a challenge to the civil judgment in this case on double jeopardy grounds. In *Halper*, the defendant was first criminally prosecuted and convicted of violating the false claims statute, 18 U.S.C. 287 (1982), by submitting 65 inflated Medicare claims that each charged $12 for a $3 procedure. He was sentenced to two years' imprisonment and fined $5,000. 490 U.S. at 437 & n.2. The government later sought civil sanctions based on the same inflated claims under 31 U.S.C. 3729-3731 (1982). For each violation, the statute required a penalty of $2,000, an additional amount equal to twice the government's damages, and the costs of the civil action. 490 U.S. at 438. Because Halper had violated the statute 65 times, he "appeared to be subject to a statutory penalty of more than $130,000." *Ibid.*

The district court in *Halper* refused to enter judgment in that amount, on the theory that a penalty "more than 220 times greater than the Government's measurable loss, qualified as punishment which, in view of Halper's previous criminal conviction and sentence, was barred by the Double Jeopardy Clause." 490 U.S. at 439-440. On the government's appeal, this Court agreed with the district court's conclusion. The Court emphasized that it was announcing a "rule for the rare case, * * * where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused." *Id.* at 449. *Halper* holds only that when a civil money penalty is intended to give the government "rough remedial justice," *Id.* at

446, a monetary penalty that far exceeds any approximate compensation of the government's loss may be punitive if it has "no rational relation" to the penalty's remedial goal. *Id.* at 449. And that situation is likely to arise, the Court observed, only "when a sizeable number of false claims is present," and not when (for example) a suit under the False Claims Act alleges "one or two false claims." *Id.* at 451 n.12.

The lower courts correctly concluded, after applying the *Halper* rule to the facts of this case, that petitioner had not been subjected to double jeopardy. Unlike the situation in *Halper*, which involved numerous, very small false claims that had caused the government to pay out only $585, this case involves four large false claims that caused the government to pay out over $150,000. The government also incurred more than $90,000 in expenses in investigating, prosecuting, and litigating matters arising out of petitioner's false claims. See *Halper*, 490 U.S. at 446 n.6 (such costs "also must be factored into a determination as to whether the sanction was disproportionate to the Government's loss"). Thus, the government was damaged at least to the extent of $240,000 by petitioner's fraud.

The total civil judgment against petitioner, $480,000, is not "overwhelmingly disproportionate to the damages he has caused." *Halper*, 490 U.S. at 449. A recovery of only twice the amount of the damages caused does nothing more than give the government "complete indemnity for the injuries done it." *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 549 (1943); see also *Rex Trailer Co.* v. *United States*, 350 U.S. 148, 152 (1956). Thus, this case is the "ordinary case" of "fixed-penalty-plus-double damages" that, as the Court recognized in *Halper*, "can be said to do no

more than make the Government whole." 490 U.S. at 449.

Petitioner argues (Pet. 12-13) that the *size* of the judgment against him, which includes approximately $230,000 not directly supported by proof of the government's damages and costs, indicates that he was punished a second time for his acts. *Halper*, however, did not announce a rule based on the size of a civil recovery entered in favor of the United States, but rather one based on a grossly disproportionate *ratio* between the recovery and the damages suffered by the government. Because the total recovery in this case is only twice the amount of the actual damages suffered by the government, this is not the "rare case" identified by *Halper* in which a civil judgment may establish a double jeopardy violation.

2. There is no need to hold this case for *Hudson* v. *United States*, No. 96-976 (to be argued Oct. 8, 1997). In *Hudson*, the question presented is whether the imposition of regulatory civil money penalties for the purpose of deterrence, followed by criminal prosecution based on the same underlying acts, may constitute double jeopardy. We have argued in *Hudson* that *Halper* has no application to civil money penalties assessed under a scheme designed for the purpose of deterring regulatory violations; we have also argued in *Hudson* that *Halper* does not apply to the situation where the criminal prosecution follows the civil proceeding.* This case, however, involves only a case-specific application of *Halper* in a context similar to the one in which *Halper* itself arose, namely, a civil

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* See 96-976 U.S. Br. at 14-31, 35-40. We are providing petitioner with a copy of our brief in *Hudson*.

recovery by the government under the False Claims Act based on the government's financial losses caused by false claims, following a criminal prosecution for the same false claims. Accordingly, the Court's disposition of *Hudson* will not affect the outcome of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
DOUGLAS N. LETTER
BRUCE G. FORREST
Attorneys

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